

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
DAVID HERION,

Petitioner,

-against-

WILLIAM PHILLIPS,

Respondent.
----- X

P.M. _____
TIME A.M. _____

04 CV 5465 (ARR)

NOT FOR
PUBLICATION

ORDER

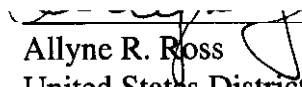
ROSS, United States District Judge:

The pro se petitioner David Herion filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on December 6, 2004. By letter dated June 21, 2005, petitioner appears to ask the court to stay the petition so that he may exhaust a new claim in state court. Specifically, petitioner seems to allege that he has received new evidence calling identification testimony into question. Respondent does not object to such a stay.

Accordingly, pursuant to Rhines v. Weber, 125 S.Ct. 1528 (2005), the court hereby stays the instant petition so that petitioner may seek to exhaust his claim in state court by filing a motion to vacate his conviction pursuant to section 440 of the New York Criminal Procedure Law. The stay is conditioned on petitioner filing a 440 motion within thirty days of the date of this order and returning to federal court to proceed with his petition for a writ of habeas corpus within 30 days of exhausting his new claim. Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001). Petitioner is advised that he may be barred from proceeding in this court if, having

been denied relief in state court, he delays in seeking to reopen these proceedings.

SO ORDERED.


Allyne R. Ross
United States District Judge

Dated: June 30, 2005
Brooklyn, New York

SERVICE LIST:

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